

**AN ORDINANCE BY
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A
MEMORANDUM OF UNDERSTANDING WITH THE ATLANTA DOWNTOWN
IMPROVEMENT DISTRICT, INC. WITH REGARD TO WOODRUFF PARK, AND
FOR OTHER PURPOSES.**

WHEREAS, the Atlanta Downtown Improvement District, Inc. ("ADID"), founded in 1995 by Central Atlanta Progress, Inc., is a public-private partnership that strives to create a livable environment for Downtown Atlanta. Together, Central Atlanta Progress and ADID are committed to a Downtown for the diverse Atlanta community and all of Downtown's property owners, employees, residents, students and visitors; and

WHEREAS, Robert W. Woodruff Park is a City-owned park comprised of approximately six acres, located in Downtown Atlanta, at the heart of the city's financial, entertainment, and academic districts, at 91 Park Place, NE, in Atlanta, Georgia (the "Park"); and

WHEREAS, as part of its commitment to Downtown Atlanta, ADID is actively involved in maintaining and improving the Park, to the benefit of both the citizens of Atlanta and its many visitors; and

WHEREAS, though the City desires to assist ADID with its maintenance and improvement of the Park, it does not currently have the resources to provide these services to the extent desired by ADID; and

WHEREAS, the City wishes to facilitate ADID's work on the Park by creating a cooperative relationship with ADID, as ADID is providing a valuable service to the City; and

WHEREAS, in order to provide the services it performs regarding the Park, ADID must raise a significant amount of funds. One manner of raising those funds is through concession sales. ADID desires to operate or cause to be operated concessions sales in the Park ("Concessions Program") as a means of fundraising. Fifty percent of the net revenues from the Concessions Program shall be retained by ADID for park improvements and maintenance. The other fifty percent of the net revenues shall be provided to the Department of Parks, Recreation, and Cultural Affairs to be deposited into a trust fund. The City shall not profit from this revenue, but rather shall utilize the revenue for park maintenance and improvements at parks throughout the City for which no conservancy is present; and

WHEREAS, currently there is a moratorium on the issuance of new vending permits in the City. In addition, the Atlanta Code of Ordinances, section 110-3(6) establishes a fee for vending within City parks of \$2,000.00 per month for weekends and \$2,000.00 per month for weekdays; and

WHEREAS, given that the mission of ADID is to improve and maintain the Park, given that the cost of ADID's work of improving and maintaining the park is high, and given the importance of the concessions fundraising to enabling ADID to fulfill its mission, it is in the best interest of the

WHEREAS, given that the mission of ADID is to improve and maintain the Park, given that the cost of ADID's work of improving and maintaining the park is high, and given the importance of the concessions fundraising to enabling ADID to fulfill its mission, it is in the best interest of the City to allow ADID to obtain a new vending permit(s) for its Concessions Program. Additionally, given that fifty percent of ADID's Concessions Program net revenue will benefit ADID and consequently the Park, and given that fifty percent of ADID's Concessions Program net revenue will be given back to the Department of Parks, Recreation, and Cultural Affairs, it is in the best interest of the City to maximize said net revenue by waiving the parks vending fee; and

WHEREAS, there are two fountains located in the Park that require significant and costly monthly maintenance, and often require repair; and

WHEREAS, until 2005, the City, through the Department of Parks, Recreation and Cultural Affairs, provided \$20,000 to Georgia State University for Park maintenance services provided by the school. In 2005, Georgia State University ceased providing such services and the City ceased its annual payment to the school; and

WHEREAS, to assist with the cost of the Park fountain upkeep, the City wishes to provide \$20,000 per year to ADID for maintenance of the Park fountains; and

WHEREAS, it is in the best interest of the City to enter a Memorandum of Understanding ("MOU") with ADID to define the cooperative relationship between the two parties, and to establish the role and obligations of each party in that relationship.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:

Section 1.

The Mayor is hereby authorized, on behalf of the City, to enter into an MOU with the Atlanta Downtown Improvement District, Inc. regarding the roles and obligations of each of the two parties in the development, maintenance, and enhancement of the Park. The MOU shall be substantially similar to the MOU attached hereto as Exhibit A. Said MOU shall at a minimum provide the following:

- a) The MOU shall make clear that the City owns the Park and shall have authority to make all final decisions regarding the Park, but shall exercise its authority in the spirit of good faith cooperation with ADID.
- b) The MOU shall provide ADID with the authority and the responsibility to develop, maintain, and enhance the Park in a manner consistent with the MOU.

- c) The MOU shall provide ADID with the authority to provide programming in the Park in a manner consistent with the MOU.
- d) The MOU shall provide ADID with the authority and primary responsibility for raising additional funds for the Park, and for overseeing the use of the funds it raises, making certain that the funds are utilized consistent with the MOU. Said fundraising efforts may include without limitation operation of the Concessions Program.
- e) The MOU shall provide ADID with the authority to place one or more attendants at the Park that shall operate in the manner set forth in the MOU, including but not limited to the following requirements: the attendants must wear a uniform that make them clearly identifiable by the public; the attendants shall have the authority to require Park attendees to abide by Park rules; the attendants shall have the authority to request to leave the Park any person who violates one or more Park rules after being given two or more warnings on any given day by a park attendant; the attendants shall not have arrest powers; and the attendants shall not replace the police services that may be provided in the Park by the Atlanta Police Department.
- f) The MOU shall provide that the City will pay to ADID at least \$20,000 per year throughout the term of the MOU as the City's contribution to the cost of maintaining the Park fountains. Should any of those funds remain after the fountain maintenance is completed, the remaining monies shall be utilized for Park facilities and/or programs selected by the Commissioner of the Department of Parks, Recreation and Cultural Affairs, or her/his designee, in consultation with ADID.
- g) The MOU shall have a term of five years with an option of one five-year renewal upon mutual agreement of the parties.

Section 2.

To the extent that ADID is donating time and money to the City, the City hereby accepts the donation.

Section 3.

ADID is hereby authorized to receive vending permit(s) for its Concessions Program for locations of the Park designated in the MOU, provided that ADID meets all of the criteria set forth in Atlanta Code of Ordinances, Chapter 30 Article XXIII, entitled Vending on Public Property, section 30-1401 through 30-1460, as may be amended and re-codified from time to time. For purposes of such vending permit(s), any City moratorium on new vending permits is hereby waived. In addition, Atlanta Code section 110-3(6) is hereby waived with regard to ADID's vending permit(s), such that ADID shall be permitted to

operate its Concessions Program without paying a vending fee. Fifty percent of the net revenues from the Concessions Program shall be retained by ADID for Park improvements and maintenance, and fifty percent of the net revenues from the Concessions Program shall be provided to the Department of Parks, Recreation, and Cultural Affairs to be deposited into a trust fund to be utilized for park maintenance and improvements at parks throughout the City for which no conservancy is present.

Section 4.

The City Attorney or her/his designee is hereby directed to prepare the MOU for execution by the Mayor, and the MOU shall be approved as to form by the City Attorney or her/his designee.

Section 5.

The MOU shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder, until the same has been signed by the Mayor and delivered to ADID.

Section 6.

All ordinances and resolutions in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of the conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Community Development and Human Resources

Caption: AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE ATLANTA DOWNTOWN IMPROVEMENT DISTRICT, INC. WITH REGARD TO WOODRUFF PARK, AND FOR OTHER PURPOSES.

Council Meeting Date: September 17, 2007

Requesting Dept.: Parks, Recreation and Cultural Affairs

B. To be completed by the department: 1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to authorize this Ordinance so as to have the Mayor enter into a Memorandum of Understanding with the Atlanta Downtown Improvement District, Inc. organization for a term of five (5) years with one option to renew for a five (5) year period upon mutual agreement of the parties. The Atlanta Downtown Improvement District, Inc. ("ADID"), founded in 1995 by Central Atlanta Progress, Inc., is a public-private partnership that strives to create a livable environment for Downtown Atlanta. Together, Central Atlanta Progress and ADID are committed to a Downtown for the diverse Atlanta community and all of Downtown's property owners, employees, residents, students and visitors. The Robert W. Woodruff Park is a City-owned park comprised of approximately six acres, located in Downtown Atlanta, at the heart of the city's financial, entertainment, and academic districts, at 91 Park Place, NE, in Atlanta, Georgia (the "Park") and as part of its commitment to Downtown Atlanta, ADID is actively involved in maintaining and improving the Park, to the benefit of both the citizens of Atlanta and its many visitors. The City desires to assist ADID with its maintenance and improvement of the Park, it does not currently have the resources to provide these services to the extent desired by ADID, and the City wishes to facilitate ADID's work on the Park by creating a cooperative relationship with ADID, as ADID is providing a valuable service to the City thus is the reason for this MOU to be put into place as soon as possible to begin this on-going working relationship with this organization by authorizing this Ordinance. It is also in the best interest of the City to enter a Memorandum of Understanding ("MOU") with ADID to define the cooperative relationship between the two parties, and to establish the role and obligations of each party in that relationship.

2. Please provide background information regarding this legislation. The Atlanta Downtown Improvement District, Inc. ("ADID"), founded in 1995 by Central Atlanta Progress, Inc., is a public-private partnership that strives to create a livable environment for Downtown Atlanta. Together, Central Atlanta Progress and ADID are committed to a Downtown for the diverse Atlanta community and all of Downtown's property owners, employees, residents, students and

visitors, the Robert W. Woodruff Park is a City-owned park comprised of approximately six acres, located in Downtown Atlanta, at the heart of the city's financial, entertainment, and academic districts, at 91 Park Place, NE, in Atlanta, Georgia and as part of its commitment to Downtown Atlanta, ADID is actively involved in maintaining and improving the Park, to the benefit of both the citizens of Atlanta and its many visitors.

The City of Atlanta does desire to assist ADID with its maintenance and improvement of the Park, however, the City does not currently have the resources to provide these services to the extent desired by ADID and wishes to facilitate ADID's work on the Park by creating a cooperative relationship with ADID, as ADID is providing a valuable service to the City and in order to provide the services it performs regarding the Park, ADID must raise a significant amount of funds. One manner of raising those funds is through concession sales. ADID desires to operate or cause to be operated concessions sales in the Park ("Concessions Program") as a means of fundraising. Fifty percent of the net revenues from the Concessions Program shall be retained by ADID for park improvements and maintenance. The other fifty percent of the net revenues shall be provided to the Department of Parks, Recreation, and Cultural Affairs to be deposited into the established Trust Fund Number **3P02 (Trust Fund) 462391 (Concessions, Other) N21D11B69999 (Ground & Site Improvements)**. The City shall not profit from this revenue, but rather shall utilize the revenue for park maintenance and improvements at parks throughout the City for which no conservancy is present.

Currently there is a moratorium on the issuance of new vending permits in the City. In addition, the Atlanta Code of Ordinances, Section 110-3(6) establishes a fee for vending within City parks of \$2,000.00 per month for weekends and \$2,000.00 per month for weekdays, given that the mission of ADID is to improve and maintain the Park, given that the cost of ADID's work of improving and maintaining the park is high, and given the importance of the concessions fundraising to enabling ADID to fulfill its mission, it is in the best interest of the City to allow ADID to obtain a new vending permit(s) for its Concessions Program. Additionally, given that fifty percent of ADID's Concessions Program net revenue will benefit ADID and consequently the Park, and given that fifty percent of ADID's Concessions Program net revenue will be given back to the Department of Parks, Recreation, and Cultural Affairs, it is in the best interest of the City to maximize said net revenue by waiving the parks vending fee. There are two fountains located in the Park that require significant and costly monthly maintenance, and often require repair, and until 2005, the City, through the Department of Parks, Recreation and Cultural Affairs, provided \$20,000.00 to Georgia State University for Park maintenance services provided by the school. In 2005, Georgia State University ceased providing such services and the City ceased its annual payment to the school, so to assist with the cost of the Park fountain upkeep, the City wishes to provide at least \$20,000.00 per year to ADID for maintenance of the Park fountains, and it is in the best interest of the City to enter a Memorandum of Understanding ("MOU") with ADID to define the cooperative relationship between the two parties, and to establish the role and obligations of each party in that relationship which is why this Ordinance is required to effectuate this relationship.

3. If Applicable/Known:

- (a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** Memorandum of Understanding
- (b) **Source Selection:**
- (c) **Bids/Proposals Due:**
- (d) **Invitations Issued:**
- (e) **Number of Bids:**
- (f) **Proposals Received:**
- (g) **Bidders/Proponents:**

(h) **Term of Contract/MOU:** Five (5) Years with one Five (5) year option to renew upon mutual consent of the parties.

4. Fund Account Center: 1A01 (General Fund) 523001 (Service/Repair/Maintenance) N21001 (Parks Administration)

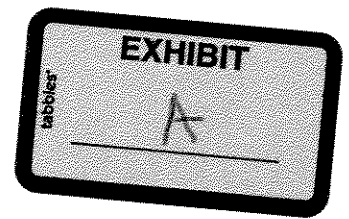
5. Source of Funds: General Fund

6. Fiscal Impact: \$20,000.00 per year during the term of this MOU.

This legislation will result in a reduction in the amount of at least \$20,000.00 annually to 1A01 (General Fund) 523001 (Service/Repair/Maintenance) N21001 (Parks Administration).

7. Method of Cost Recovery: N/a

8. This Legislative Request Form Was Prepared By: Debra F. Harris, M.A., Departmental Contracting Officer/Legislative Liaison, Department of Parks, Recreation and Cultural Affairs and Robin Shahar, Subject Matter Attorney, Law Department.



MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF ATLANTA AND
ATLANTA DOWNTOWN IMPROVEMENT DISTRICT, INC.

This Memorandum of Understanding ("MOU"), dated this ____ day of _____, 2007, is between the City of Atlanta ("City") and Atlanta Downtown Improvement District, Inc. ("ADID") (collectively, "the Parties").

I. Background

Robert W. Woodruff Park is a City-owned park comprised of approximately six acres, located in Downtown Atlanta, at the heart of the city's financial, entertainment, and academic districts, at 91 Park Place, NE, in Atlanta, Georgia (the "Park").

Atlanta Downtown Improvement District, Inc., founded in 1995 by Central Atlanta Progress, Inc., is a public-private partnership that strives to create a livable environment for Downtown Atlanta. Together, Central Atlanta Progress and ADID are committed to a Downtown for the diverse Atlanta community and all of Downtown's property owners, employees, residents, students and visitors. As part of its commitment to Downtown Atlanta, ADID is actively involved in maintaining and improving the Park, to the benefit of both the citizens of Atlanta and its many visitors.

The purpose of this MOU is to lay the foundation for a cooperative working relationship between the Parties, and to establish the role of each Party in that relationship, as the Parties continue to work together to further their common goal of maintaining and improving the Park. These goals include without limitation the design, installation and maintenance of capital improvements to the Park; design, installation, and maintenance of environmentally friendly landscape improvements; design, organization and implementation of programs in the Park; and maintenance of the Park so that it is consistently in a safe and attractive condition. While pursuing the goals set forth in this MOU, the Parties will remain sensitive to the impact of work and activities in the Park upon the surrounding neighborhoods and will strive to accomplish these goals in a manner that minimizes disruption to the neighbors.

II. General Agreements: Role of Each Party in Working Relationship

The following is a list of agreements regarding the basic roles of the City and ADID in their working relationship established by this MOU.

- A. The City shall maintain ownership of the Park.
- B. The City shall maintain its authority to make all final decisions regarding the Park, but shall exercise this authority in the spirit of good faith cooperation with ADID.
- C. ADID shall prepare a Master Plan for the Park that shall include, but not be limited to, Park specifications, a blueprint for capital improvements, landscape details, objectives for programming activities within the Park, and a blueprint for Park management decisions. ADID shall comply with the City's review and approval process for park master plans, said process to be established by the Commissioner of the Department of Parks, Recreation and Cultural Affairs (the "Commissioner"). The City's review and approval process shall include, but not be limited to, a presentation by ADID to Neighborhood Planning Unit M for its review and comment, review and comment by the Urban Design Commission, and approval by the Atlanta City Council and Mayor. The Master Plan shall not be deemed final, nor shall it be implemented, until after ADID has successfully completed the Master Plan review and approval process. As used hereinafter in this MOU, "Master Plan" shall refer to the Park Master Plan that has been approved as set forth in this subsection IIC.
- D. All City decisions regarding the Park that arise from this MOU or the Master Plan (i) shall be made by the Commissioner or her/his designee, unless the Commissioner, the City Attorney, the Atlanta Mayor or the Atlanta City Council determines that the decision should be made in some other manner and (ii) shall be communicated in writing to ADID.
- E. The City and ADID shall operate, develop, maintain, and manage the Park together, in good faith cooperation, consistent with the Master Plan and this MOU.
- F. Project proposals and implementation plans for improvements and other initiatives in the Park shall be prepared by ADID, based on available and anticipated funds and the Master Plan. ADID shall comply with the City's review and approval process for park projects, improvements and initiatives, said process to be established by the Commissioner. ADID shall be responsible for determining any and all other governmental bodies and/or regulatory agencies from which approval must be obtained. ADID shall not begin work on these projects, improvements or other initiatives until it has successfully completed the City's review and approval process, and it has received written approval from any other governmental body or regulatory agency from which approval is required.
- G. ADID shall be responsible for implementing the projects, improvements or other initiatives that have been approved as set forth in section II. F.

above. Contingent upon the requisite approvals being received, these projects may include, without limitation: creation of an on-leash dog area that may include fencing and a water fountain; installation of a Pétanque or bocce ball court; removal of benches in the Park and installation of tables and chairs; repair and restoration of all pavers; refurbishment of Park lighting; refurbishment of Park fountains; improvement of Park landscaping; and improvement of Park irrigation.

- H. When a decision regarding the Park is to be made solely by the Commissioner, the Commissioner shall review, provide feedback on, and if appropriate, provide approval of any and all submissions by ADID within thirty days of receipt thereof. In the event that the approval process requires more than Commissioner approval, as determined pursuant to section II D above, this thirty-day time limit shall not apply.
- I. The City shall have the right to oversee all work performed upon the Park, including but not limited to projects, construction of capital improvements, landscaping, and other initiatives. Though the City has the right to oversee all work being performed at the Park by or on behalf of ADID, it is not obligated to do so. In addition, though the City has the right to suspend a Park project being performed by or on behalf of ADID if the project creates a safety hazard, it is not obligated to inspect the work to determine if a safety hazard exists, and shall not be deemed liable by ADID in the event that the City does not detect a safety hazard. The quality and safety of the work performed by or on behalf of ADID is the responsibility of ADID and not the City.
- J. ADID shall have primary responsibility for raising additional funds for the Park, and will oversee the use of funds it raises, making certain that the funds are utilized consistent with the Master Plan and this MOU. ADID may solicit and receive funds from individuals, foundations, governmental organizations, and corporate sponsors. In the event that a private sponsor requests recognition for its contribution in the form of on-site signs or other notices to the public that shall remain in the Park for greater than six months, ADID is not authorized to agree to such recognition unless and until receiving approval from the Commissioner and the City Council. Where the sign or other public notice shall remain in the Park for six months or less, ADID must receive prior written approval from the Commissioner, provided, however, that where the sign or other public notice pertains to ADID programming in the Park and shall remain in the Park for two weeks or less, no approval shall be required. All signs related to sponsors and sponsorship in the Park shall be consistent in overall shape and dimensions.

- K. Other parties may contribute to the improvement of the Park, as long as all gifts are in conformance with the Master Plan and are subject to City approval and oversight.
- L. The City shall be responsible for any claim, damage, loss or expense arising from the Park that is attributable to intentional or negligent acts, errors, or omissions by the City, its consultants/contractors or their officers, agents or employees, or, its consultants'/contractors' subconsultants/subcontractors, or their officers, agent or employees. ADID shall be responsible for any claim, damage, loss or expense arising from the Park that is attributable to intentional or negligent acts, errors, or omissions by ADID, its consultants/contractors or their officers, agents or employees, or, its consultants'/contractors' subconsultants/subcontractors, or their officers, agent or employees. Neither this MOU, nor this provision specifically, shall waive the City's nor ADID's right to be indemnified, defended and/or held harmless by consultants, contractors, their subconsultants and/or subcontractors, the officers, agents or employees of those companies, or any one else performing work at or related to the Park.
- M. Any personnel employed by or volunteering on behalf of ADID shall be deemed "employees" or "volunteers" respectively of ADID, and shall not be deemed employees or volunteers of the City. ADID shall remain responsible for the supervision, management and control of such employees and volunteers and any payroll, taxation or other employment obligation incident to their work. Any personnel employed by or volunteering on behalf of the City shall be deemed "employees" or "volunteers" respectively of the City, and shall not be deemed employees or volunteers of ADID. The City or its designee shall remain responsible for the supervision, management and control of such City employees and volunteers and any payroll, taxation or other employment obligation incident to their work.
- N. ADID shall maintain general liability insurance in the amount of \$1,000,000 bodily injury and property damage combined single limit, regarding all work performed at the Park by ADID, ADID's employees, volunteers, contractors and subcontractors, including but not limited to construction work, vending and/or concession sales, and provision of security attendant services. The City shall be covered as an additional insured under the general liability insurance policy, and such insurance shall be primary with respect to the additional insured.
- O. The City and ADID shall not discriminate based upon race, creed, color, religion, sex, national origin, marital status, age, physical handicap, sexual orientation, or gender identity in the implementation of the Master Plan or this MOU.

- P. ADID shall maintain records and accounts in connection with the performance of this MOU that will accurately document all funds received by ADID and all costs incurred by ADID, both direct and indirect, of whatever nature, at all times for the previous eight (8) years unless otherwise specified by applicable law. The City of Atlanta or its designated representatives shall have the right to examine and copy the records and accounts at all reasonable times, with advance notification. The City reserves the right to audit ADID's records and accounts relating to Woodruff Park and/or this MOU. Any such audit will be commenced within one year of the expiration of this MOU.
- Q. Title to all of ADID's Park improvements of such a nature as cannot be removed without substantial damage to the Park, or some portion thereof, shall vest in the City upon completion of construction or installation.
- R. The Commissioner and ADID shall meet in January of each year of the Term of this MOU to discuss any Outdoor Festivals, other outdoor events, and Park programming being scheduled by ADID for the upcoming year. ADID will also need to meet the requirements of the City's Outdoor Events Ordinance for its Outdoor Festivals, and for its other events that do not qualify as ADID Park programming as described in section IV.I. below. The determination of which, if any, of ADID's Outdoor Festivals will be deemed "City-Sponsored" will be made by the City's Chief of Staff, in accordance with the criteria and procedure set forth in the City's Outdoor Events Ordinance.
- S. ADID shall submit to the Commissioner copies of the monthly progress reports that ADID prepares and submits to its Board of Directors. When new improvements are completed by ADID, ADID will also submit copies of "as built" drawings to the Commissioner for future reference.

III. City Responsibilities

In addition to the responsibilities listed above, the City shall have the following responsibilities:

- A. Maintain the full range of existing commitments to the Park, including basic maintenance, litter control, and utilities commitments, and provide a letter reflecting those commitments to ADID upon request for fundraising purposes.
- B. Allocate in its annual budget no less than twenty thousand dollars (\$20,000) per year to be spent on Park maintenance other than basic maintenance. This \$20,000 shall be provided directly to ADID and shall be deemed by the Parties as the City's contribution toward maintenance of

the Park fountains. Should any of those funds remain after the fountain maintenance is completed, the remaining monies shall be utilized for Park facilities and/or programs selected by the Commissioner or her designee in consultation with ADID.

- C. Provide sanitation services for the Park at no cost to ADID, except that ADID shall be responsible for its own sanitation services costs for Outdoor Festivals, Assemblies, Large Gatherings, or other outdoor events sponsored by ADID, where the City Code of Ordinances requires the sponsor to assume the sanitation costs. Sanitation services shall include scheduled garbage collection.
- D. Provide, or arrange and pay for provision of utilities for the Park, except as set forth in section IV. I. below.
- E. Provide and maintain a sign in a prominent place in the Park stating the Park's name and the City's ownership thereof.
- F. Provide and maintain a sign or signs in a prominent place or places in the Park listing Park rules. Not all of the Park rules set forth in the Atlanta Code of Ordinances will be listed on the sign(s). Each and every Park rule set forth in the Atlanta Code of Ordinances will apply to and shall be enforceable in the Park, including without limitation those rules that are not posted on the sign(s). The content of the sign(s) containing the Park rules will be determined by the City, after receiving input from ADID.
- G. Protect the Park and the projects, improvements, and initiatives therein by coordinating the management of events held in the Park with ADID, such that the management is consistent with the City of Atlanta Outdoor Events Ordinance and with the design features and other guidelines set forth in the Master Plan.
- H. Provide a letter to ADID or any potential donor, upon request, confirming that, in accordance with this MOU, ADID has the authority to perform or cause to be performed capital construction projects in the Park and states that ADID may raise funds for the same.

- I. Contribute annually, when funds are available, up to fifty thousand dollars (\$50,000) to programming costs in the Park to ensure that the Park is a vital and well attended downtown entity.
- J. Use commercially reasonable efforts to ensure that all funds committed by the City to the Park are used effectively, efficiently, and as intended.

IV. ADID Responsibilities

In addition to the responsibilities listed above, ADID shall have the following responsibilities:

- A. Seek to raise money from third-parties to support projects, improvements, and initiatives for enhancing the Park.
- B. Create an environmentally-friendly Park design that will include, but is not limited to, green spaces, lighting, and native plant landscaping, consistent with the Master Plan.
- C. In addition to the maintenance performed by or at the direction of the City, pursuant to sections III.A. and III.B. above, ADID will cut the grass and provide other lawn maintenance in the Park. ADID will plant and maintain the Park's flower beds, and for that purpose, may acquire flowers at no cost from the City's greenhouse to the extent that such flowers are available. To the extent ADID deems reasonably appropriate and necessary, ADID may provide additional maintenance so that the Park remains in a safe and attractive condition, and so that all projects, improvements, infrastructure and initiatives are adequately maintained to protect the investments made and to meet the design requirements of the Master Plan. With regard to any maintenance to be undertaken by ADID, ADID shall submit an annual maintenance plan setting forth the maintenance activities sought to be undertaken to the Commissioner no later than December 1 of each year. ADID shall not begin said additional maintenance until the maintenance plan is approved in writing by the Commissioner.
- D. Maintain all other plants and vegetation planted in the Park, in addition to those set forth in subsection IV.C. above, to meet the design requirements of the Master Plan.
- E. Support and implement any water conservation rules, policies, and/or practices adopted or endorsed by the City.
- F. Support and manage the maintenance activities of third parties hired or retained by ADID to improve and protect the Park consistent with the Master Plan and this MOU.
- G. In addition to the garbage collection and litter control performed by the City, ADID will pick up litter from around the Park daily.
- H. Where annual maintenance costs of the Park fountains exceed the City's financial commitment of \$20,000 per year, as set forth in section III. B. above, ADID shall pay the remaining annual maintenance costs, either from its own funds or from funds that it receives from a third party or parties.
- I. Organize, design, implement and/or support programming activities consistent with the Master Plan and this MOU. This programming may include without limitation: SunTrust Lunch on Broad at Woodruff Park, a weekly lunch-time concert series between May through October; Wednesdays in Woodruff, a weekly lunch-time entertainment series between May through October; First Thursdays reception, a monthly evening wine and cheese reception; and Fresh Fridays Green Market, a weekly produce market. For those ADID events that do not meet the City's definition of Outdoor Festival, as set forth in the City's Outdoor Events Ordinance, the Commissioner shall determine whether the event constitutes Park "programming" pursuant to this MOU. This decision shall be based upon written criteria prepared by the Commissioner or her designee. Where possible,

the decision shall be made at the January meeting between ADID and the Commissioner, as described in section II.R. above. Where the Commissioner determines that an event qualifies as programming pursuant to this MOU, ADID need not receive an outdoor event permit, but must notify the City's Special Events Manager at least thirty days prior to the event for informational and planning purposes only. Where the Commissioner determines that an event does not qualify as programming pursuant to this MOU, ADID must receive an Outdoor Event permit to hold the event, as prescribed by the City's Outdoor Events Ordinance. In addition, where the Commissioner determines that the event constitutes programming, and said programming results in the raising of revenue, ADID shall contribute 50% of the net revenue to the City for use at other parks, and shall retain 50% of the net revenue to be applied to ADID's efforts to improve and maintain the Park. Any function for which ADID obtains an Outdoor Event permit, pursuant to the Outdoor Events Ordinance, shall be exempt from this provision. The City shall pay for electricity necessary for ADID programming that is pre-approved by the Commissioner. ADID shall be responsible for paying for or causing to be paid the electricity costs for any Park event that is arranged by ADID but not an actual ADID event, or is an ADID event that is not pre-approved by the Commissioner.

- J. Provide one or more park attendants at the Park to the extent deemed reasonably appropriate and necessary by ADID. ADID shall provide uniforms for the park attendants so that they are clearly identifiable by the public. Said park attendants shall have the authority to require Park attendees to abide by Park rules that are posted in the Park and/or are set forth in the Atlanta Code of Ordinances or other applicable laws. The park attendants shall have the authority to request to leave the Park any person who violates one or more Park rules after being given two or more warnings by a park attendant, provided that the rule violation(s) and warnings must all occur on the same day as the request to leave the Park. The park attendant(s) must document in writing the details that preceded the request to leave, including the rule(s) violated and the time of the warnings, and ADID shall retain such documentation throughout the term of this MOU. The park attendant(s) shall not replace the police services that may be provided in the Park by the Atlanta Police Department.
- K. Serve as the major catalyst for interested parties to be involved with the Park through advocacy, volunteer, and/or fundraising activities, and through working with the ADID Board of Directors.
- L. ADID shall have the right to operate or cause to be operated concessions at the Park, in locations designated on Exhibit A attached hereto and incorporated herein by reference, after receiving approval and appropriate permits from the City, provided that fifty percent (50%) of the net revenues from the Park concessions shall be retained by ADID for Park improvements and maintenance, and fifty percent (50%) of the net revenues from the Park concessions shall be provided to the Department of Parks, Recreation, and Cultural Affairs to be deposited into a trust fund to be utilized for park maintenance and improvements at parks throughout the City for which no conservancy is present. The City shall waive any vending fee associated with the concession sales. On those occasions where a permitted Outdoor Festival occurs in the Park, or in a portion of the Park where ADID concessions are located, and the Outdoor Festival organizer does not want the concessions to be located in the permitted Outdoor Festival area, ADID shall discontinue or move its concessions operations from the Outdoor Festival area as directed by the Commissioner, but in no event shall this cessation extend beyond the official start time of the Outdoor Festival through the official end time of the Outdoor Festival. This provision regarding discontinuation of concessions during permitted Outdoor Festivals shall not apply to full-service concessions containing indoor, sit-down seating.
- M. Notify the Commissioner within twenty-four hours of discovering a safety, sanitary, and/or maintenance issue that needs to be addressed in the Park regardless of whether ADID intends to resolve the issue.
- N. Notify the Commissioner within three hours or sooner of learning of any emergency event regarding or arising in the Park that involves the media, the police or fire departments or emergency medical services.
- O. Use all commercially reasonable efforts to ensure that all funds committed by or to ADID for use regarding the Park are used effectively, efficiently, and as intended.
- P. Section IV. O above shall survive the termination or expiration of this MOU.

V. Contractors Performing Work on the Park

- A. ADID shall require all vendors, contractors and subcontractors performing any work related to this MOU to sign an agreement with ADID that includes the following indemnification provision, with the exception that

the name of the contractor or subcontractor shall replace "Contractor" as used herein below:

"Indemnification and Hold Harmless Clause"

(1) Releases and Indemnification:

Contractor hereby releases and shall indemnify, defend, and hold harmless the City of Atlanta, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of Contractor, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this Agreement.

(2) Negligence and Waiver

Contractor's aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. Contractor specifically waives any immunity provided against this indemnity by any industrial insurance or workers' compensation statute. Contractor further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Agreement. This Indemnification and Hold Harmless provision shall survive any termination or expiration of this Agreement.

B. The following insurance requirements must be met by every vendor, contractor and subcontractor that performs work related to the Park for or on behalf of ADID, and shall be included in a contract between ADID and each of its vendors, contractors and subcontractors. Compliance is required by all contractors of any tier. Insurance requirements are based on information received as of the date of this MOU. The City reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this MOU.

1. ADID shall not allow its vendors, contractors or subcontractors to commence any work of any kind pursuant to this MOU until all Insurance requirements contained in this MOU shall have been complied with, and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City in the form of a certificate of insurance.
2. Any and all companies providing insurance required pursuant to this MOU must meet the minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Company in the current Best's Key Rating Guide - Property - Casualty. The ratings for each company must be indicated on the Accord Certificate of Insurance form. For all contracts, regardless of size, companies providing Insurance under this MOU must have a current:
 - i. Best's Rating not less than A-; and current;
 - ii. Best's Financial Size Category not less than Class IX; and
 - iii. Authorization issued by the Insurance Commissioner, State of Georgia, to conduct and transact insurance contracts.

If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to ADID, who shall promptly itself, or require its contractor to, obtain a new policy issued by an insurer acceptable

to the City, and shall submit evidence of the same to the City as required herein.

3. Workers' Compensation and Employer's Liability Insurance

Every vendor, contractor and subcontractor that performs work related to the Park for or on behalf of ADID shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and every employee who is or may be engaged in work related to the Park:

Bodily Injury by Accident/Disease \$100,000 each accident
Bodily Injury by Accident/Disease \$100,000 each employee
Bodily Injury by Accident/Disease \$500,000 policy limit

4. Automobile Liability Insurance

Every vendor, contractor and subcontractor that performs work related to the Park for or on behalf of ADID shall procure and maintain Automobile Liability Insurance with not less than \$500,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

1. Comprehensive Form
2. Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event the vendor, contractor or subcontractor does not own any automobiles in the corporate name, non-owned and hired automobile coverage will be maintained in the amount indicated above.

5. Upon written notice by the City of ADID's failure to ascertain that each of its vendors, contractors and subcontractors furnishes, delivers, and maintains such insurance as herein provided, this MOU, at the election of the City, may be declared forthwith suspended, discontinued, or terminated, provided that ADID will be provided five (5) days to cure any identified failure upon its first violation of this provision. Failure of ADID's vendor, contractor or subcontractor to take out and/or to maintain any required insurance shall not relieve ADID, its vendors, contractors or subcontractors, from any liability under this MOU, nor shall these requirements be construed to conflict with the obligation of this MOU concerning indemnification.

6. The City shall be covered as an additional insured under any and all insurance required pursuant to this MOU, and such insurance shall be primary with respect to the additional insured. Confirmation of this shall appear on the Certificate of Insurance and on any and all applicable Insurance policies.
7. Each and every agent acting as Authorized Representative on behalf of a company affording coverage pursuant to this MOU shall warrant when signing the Certificate of Insurance that specific authorization has been granted by the company for the agent to bind coverage as required and to execute the Certificate of Insurance as evidence of such coverage. In addition, each and every agent shall warrant when signing the Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the company or companies are currently in good standing in the State of Georgia.
8. For all insurance and bonds under which the City is an additional insured, the City must, without exception, be given not less than thirty (30) days prior written notice of the proposed cancellation for all reasons other than non-payment of premium or for any material change in any insurance or bond. The City must, without exception, be given not less than ten (10) days prior written notice of the proposed cancellation of any insurance or bonds due to non-payment of premium. Confirmation of these mandatory notice requirements must appear on any Certificate of Insurance and all bonds provided to the City by ADID as evidence of its compliance.

The City will accept no documentation from ADID that imposes conditions on the insurance and bonding requirements contained in this MOU or required by applicable law. The City will also not accept any Certificate of Insurance that contains language similar in intent to the following: "Should any of the above-described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail ____ days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."

ADID must also submit to the City for each required policy of insurance an Endorsement evidencing the City's rights to unconditional notice of a policy cancellation, if the underlying policy does not already contain such compliant cancellation notice

requirements and an endorsement is required to amend them to comply with this requirement.

All cancellation notices should be sent to the attention of Risk Management at 68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303.

VI. Term of MOU

This MOU will commence as of the date of its full execution, as shall be reflected on the first page of the MOU, and the MOU will continue in effect for five (5) years. Upon mutual agreement of the Parties, as indicated in writing, the Parties may renew this MOU for one additional five-year term.

VII. Suspension of Work and Termination of MOU

- A. In the event that the City reasonably determines that any work being performed on the Park, or any failure to perform work on the Park, is inconsistent with the Master Plan, this MOU, and/or the project, improvement or initiative plans approved as set forth in section II. above, the City shall immediately contact ADID in writing and shall articulate the corrective action required. The City shall state the number of days that ADID shall have to implement the corrective action, and shall make such determination based upon the seriousness of the matter, the safety implications of the matter, and the amount of time that it would reasonably take to implement that type of correction. The City shall be reasonable with regard to granting extensions of time if ADID indicates that it needs additional time and is making a good faith effort to implement the corrective action.
 - 1. ADID shall use all commercially reasonable efforts to implement the corrective action within the time set forth by the City in its written notice. In the event that ADID needs additional time to implement the corrective action, it shall request an extension of time for a defined time period.
 - 2. In the event that ADID does not make a good faith effort to implement the corrective action within the time frame established by the City, either originally or in an extension of time, the City shall have the right to suspend the offending project until the corrective action is implemented, at no cost to the City.

3. In the event that the offending action is a failure to perform work, including but not limited to maintenance work, and in the event that ADID does not make a good faith effort to implement the corrective action within the time frame established by the City, either originally or in an extension of time, the City shall have the right to perform the work or direct that the work be performed. ADID shall reimburse the City for the reasonable cost of performing the work.
 4. In the event that the City and ADID disagree about the corrective action to be implemented, the Parties shall attend Alternative Dispute Resolution ("ADR") in an attempt to resolve the matter. The work at issue shall be suspended until the completion of the ADR. Should the Parties be unable to resolve the corrective action issue after ADR, the City shall have the right to terminate this MOU for cause, at no cost to the City.
- B. In the event that the City reasonably determines that any work being performed on the Park creates a safety hazard, the City shall suspend the work immediately and shall bear no cost associated with the suspension. The City shall immediately notify ADID, in writing and by telephone, that the work has been suspended and the corrective action required. The work shall remain suspended until the corrective action is implemented.
- C. In the event that the City reasonably determines that any failure to perform work on the Park is creating a safety hazard, the City may close the Park, and shall bear no cost associated with the closure. The City shall immediately notify ADID, in writing and by telephone that the Park has been closed and the corrective action required. The City may keep the Park closed until the corrective action is implemented.
- D. Either Party shall have the right to terminate this MOU without cause at any time prior to the MOU's expiration by giving written notice to the other Party at least thirty (30) days prior to the date such termination is to be effective, and such termination shall be at no cost to either of the Parties. In the event of such termination, ADID shall remain obligated to utilize or cause to be utilized all donated and/or committed funds as intended by the donor, pursuant to section IV. O. above.

VIII. Notices

- A. Any and all notices given hereunder shall be addressed to the other party at the following address and/or telephone number, or at any other address and/or telephone number provided in writing in the future.
1. Dianne Harnell Cohen

Commissioner, Department of Parks, Recreation and Cultural Affairs
City of Atlanta
675 Ponce De Leon Avenue, 8th Floor
Atlanta, Georgia 30308
(404) 817-6788

2. A.J. Robinson
President, Atlanta Downtown Improvement District, Inc.
50 Hurt Plaza, Grand Lobby
Atlanta, GA 30303
404-658-1123

IN WITNESS WHEREOF, the City and ADID have caused this MOU to be executed by their duly authorized officials, the day and year first above written.

ATTEST:
Sworn to and subscribed
Before me this _____ day
of _____, 2007.

**ATLANTA DOWNTOWN
IMPROVEMENT DISTRICT, INC.:**

Notary Public

_____, PRESIDENT

ATTEST:

CITY OF ATLANTA:

Municipal Clerk (Seal)

SHIRLEY FRANKLIN, MAYOR

RECOMMENDED:

APPROVED:

Commissioner,
Department of Parks, Recreation,
and Cultural Affairs

Chief Financial Officer

RECOMMENDED:

APPROVED:

Chief Operating Officer

Chief Procurement Officer

APPROVED AS TO FORM:

Senior Assistant City Attorney

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Debra F. Harris

Contact Number: (404) 817-6795

Originating Department: Parks, Recreation and Cultural Affairs

Committee(s) of Purview: Community Development and Human Resources

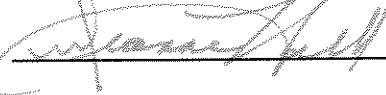
Chief of Staff Deadline: August 13, 2007

Anticipated Committee Meeting Date(s): August 28 & September 11, 2007

Anticipated Full Council Date: September 17, 2007

Legislative Counsel's Signature: Terry Grandison



Commissioner Signature: 

Chief Procurement Officer Signature: _____

CAPTION


AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE ATLANTA DOWNTOWN IMPROVEMENT DISTRICT, INC. WITH REGARD TO WOODRUFF PARK, AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any)

Mayor's Staff Only

Received by CPO: _____
(date)

Received by LC from CPO: _____
(date)

Received by Mayor's Office: 8.13.07 
(date)

Reviewed by:  8/16/07
(date)

Submitted to Council: _____
(date)